IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

THURSDAY, THE 9TH AUGUST 2007 / 18TH SRAVANA 1929

Crl.L.P..No. 518 of 2007()

CC.NOS.1485 & 1486/2004 of J.M.F.C.-II, KOCHI

.....

PETITIONER/COMPLAINANT:

K.C.GEORGE,C/O.R.R.TRADING CO.,
BAZAR ROAD,KOCHI-2.

BY ADV. SRI.C.SANKUNNY

RESPONDENTS:

---

1. BONIFUS KARNETH,KARNETH HOUSE,
1/967,KOTTAVALAPPU,NEAR BASALICA CHURCH,
FORT KOCHI.

2. STATE OF KERALA REPRESENTED BY ITS
PUBLIC PROSECUTOR,HIGH COURT OF KERALA,ERNAKULAM.

R2-BY P.P.SRI. THOMAS JOHN AMBOOKKAN

THIS CRIMINAL LEAVE PETITION HAVING COME UP FOR ADMISSION ON 09/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K. THANKAPPAN, J.

CRL.L.P.NO.518 OF 2007

Dated this the 9th day of August, 2007.

O R D E R

This is an application for special leave to appeal against the common order passed in C.C.Nos.1485 & 1486/2004 on the file of the Judicial Magistrate of First Class-II, Kochi. The complaint filed before the court would show that the 1st respondent had borrowed an amount of Rs.55,000/= from the petitioner/complainant on two occasions and in discharge of the said amount, the 1st respondent had issued two cheques in favour of the petitioner/complainant. But, on presentation of the cheques, the same were dishonoured on the ground of insufficiency of fund with the account of the 1st respondent. After getting intimation from the Bank regarding dishonour of the cheques, a lawyer notice has been issued to the 1st respondent but, no reply has been filed. Hence, the complaint filed before the court alleging that the 1st respondent had committed an offence punishable under Section 138 of the N.I.Act. With the above allegation, the petitioner/complainant himself was examined before the court and he had given evidence in terms of the complaint. However, PW1- the complainant himself admitted before the court

that the cheques in question were issued only as a security and there was also an undertaking that the cheques shall not be presented for encashment. If so, the trial court found that the cheques did not create any liability as per the provisions of Sections 5 and 6 of the N.I.Act. Hence, the 1st respondent has been acquitted. Against which, this application for special leave has been attempted.

2. Heard the learned counsel appearing for the petitioner/complainant and perused the records made available to this Court. This Court also had gone through the deposition of PW1- the complainant and it is stated by PW1 that the cheques were given by the 1st respondent only as a security and there was also an undertaking that the cheques shall not be presented for encashment. If so, the finding entered by the trial court is absolutely on legal basis. Hence, the judgment of the trial court did not require any interference by this Court. Accordingly, the special leave to appeal stands dismissed.

K. THANKAPPAN, JUDGE.

cl